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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/000,422	10/31/2001	Daniel G. Schkolnik	5038-147	9698

7590 09/09/2003
MARGER JOHNSON & McCOLLOM, P.C.
1030 S.W. Morrison Street
Portland, OR 97205

EXAMINER

DINH, DUC Q

ART UNIT	PAPER NUMBER
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2674

3

DATE MAILED: 09/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/000,422

Applicant(s)

SCHKOLNIK, DANIEL G.

Examiner

DUC Q DINH

Art Unit

2674

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: page 2, line 30, opposing sides 44-46, page 3 lines 17 first and second sides 44 and 46 are not shown in Fig. 4 and 5.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. The term "opposed sides" in claims 2, 6, 11, 15, is a relative term which renders the claim indefinite. The term "opposed sides" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. Although the specification does mention the opposed sides 44, 46 are disposed so that the ends of the opposed sides are spaced apart farther than their centers (page 2, lines 29-31). The opposed sides 44 and 46 are not shown in Fig. 4 and 5. In addition, there are two pairs opposed sides (page 3, lines 13-18), It is not clear that what opposed sides are claimed.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-19 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant

Admitted Prior Art, (Fig. 1-2, pages hereinafter AAPA.

In reference to claims 1-3, 5-7, 10-12 and 15-17, the AAPA shown in Fig. 2 an optical window for an optical device having rectangular shape (claim 1) comprising; an optical (stroboscopic) wheel 20 comprising a circular disc having a plurality of windows arranged adjacent a periphery of the disc (claim 5); light source 12, light detector 14, light path is defined between the light source and the detector (page 2, lines 13-24), light emitted from a light source 12 is detected by detector 14, a (stroboscopic) wheel 20 is interposed therebetween (claims 10 and 15) , such that the light passes through the window of the wheel (page 1, lines 15-18).

The AAPA discloses all the subject matters claimed with the exception that the window being characterized by a substantially hourglass shape (claims 1, 5, 10, 15), first pair of opposite sides disposed so that the end of the opposed sides are spaced farther apart than the center of the opposed sides (claims 2, 6, 11, 16), wherein the first pair of opposed sides describe hyperbolic curve (claims 3, 12, 17). It would been obvious to one having ordinary skill in the art to change the shape of the optical window as desired as was judicially recognized with **In re Dailey, 149**

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USPQ 47 (CCPA 1976) which recognizes that CHANGE IN FORM OR SHAPE of well known elements is normally not directed toward patentable object matter.

In reference to claims 4, 8, 13 and 18 the AAPA discloses that in the computer mouse, light passes through straight-sided aperture 22 (transparent) in the signal-generating wheel 20 (Fig. 2).

In reference to claims 9, 14 and 19 the AAPA Fig. 2 shown that each window 22 is elongated to define a long axis being substantially congruent with the radius of the wheel 20 as claimed.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DUC Q DINH** whose telephone number is **(703) 306-5412**. The examiner can normally be reached on Mon-Fri from 8:00.AM-4:00.PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **RICHARD A HJERPE** can be reached on **(703) 305-4709**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

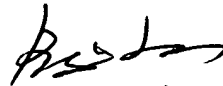
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Hand-delivery response should be brought to: Crystal Park II, 2121 Crystal Drive,
Arlington, Va Sixth Floor (Receptionist)

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the Technology Center 2600 Customer Service Office whose telephone
number is (703) 306-0377.

DUC Q DINH
Examiner
Art Unit 2674

DQD
September 5, 2003


REGINA LIANG
PRIMARY EXAMINER